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असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित

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नई दिल्ली, शनिवार, नवम्बर 4, 2000/कार्तिक 13, 1922

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NEW DELHI, SATURDAY, NOVEMBER 4, 2000/KARTIKA 13, 1922

भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 2 नवम्बर, 2000

आ.अ. 62(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग वर्ष 1997 की निर्वाचन अर्जी संख्या 1 में मध्य प्रदेश उच्च न्यायालय, जबलपुर के तारीख 22-9-2000 के आदेश को एतद्वारा प्रकाशित करता है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/म.प्र./लो.स./ (1/97)/97]

आदेश से,

एल. एच. फारुकी, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 2nd November, 2000

O.N. 62(E).—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the order of the High Court of Madhya Pradesh, Jabalpur dated 22-9-2000 Election Petition No. 1 of 1997.

उच्च न्यायालय, मध्य प्रदेश, जबलपुर

HIGH COURT OF MADHYA PRADESH AT JABALPUR**ELECTION PETITION NO. 1/97**

Dilip Parasram, aged 32 years s/o Shri Parasram Sohagopur r/o Chhotibazar, Chhindwara, Tah. & Distt. Chhindwara (M.P.)

... Petitioner

Versus

1. Shri Kamalnath s/o Shri Mahendranath r/o Shikarput, Tah. & Distt. Chhindwara (M.P.)
2. Shri I.S. Chouhan s/o not known r/o Tah. Parasia District Chhindwara (M.P.).
3. Shri Sunderlal Patwa s/o not known sitting member of Parliament from Chhindwara, M.P. c/o the Speaker, Lok Sabha, New Delhi.
4. Prakash Kumar Bawne s/o not known r/o Teh. Chhindwara, District Chhindwara (M.P.).
5. Manmohan Shah Batti, s/o not known r/o Tah. Chhindwara, District Chhindwara (M.P.).
6. Yoshwant Daheria, s/o not known r/o Tah. Chhindwara, District Chhindwara (M.P.).
7. Rajendra Kumar Marshole s/o not known r/o Tah. Chhindwara, District Chhindwara (M.P.).
8. Rajesh Tantrik, s/o not known r/o Tah. Chhindwara, District Chhindwara (M.P.).
9. Vijay Singh Baghel s/o not known r/o Tah. Chhindwara, District Chhindwara (M.P.).
10. The Returning Officer, Parliament Constituency No. 27, Chhindwara (M.P.).

आवेदक

विरोधी पक्षकार

Election Petition under sections 80-A and 81 of the Representation of the People Act, 1951, for declaration of the election of respondent No. 3 Shri Sunderlal Patwa, the returned Candidate to be void and further to grant any other relief के लिए आवेदनपत्र।

याचिका आवेदक के वकील श्री 199 को प्रस्तुत की गई।

D.S. Thakur द्वारा दिनांक 27-3-97 199 को प्रस्तुत की गई।

आवेदनपत्र दिनांक 22-9-2000 को माननीय न्यायमूर्ति श्री Dipak Misra

और माननीय न्यायमूर्ति श्री के समक्ष आवेदक के वकील श्री R.K. Thakur, Mr. D.S. Thakur Shri V.K. Tankha for the Counsel for the

respondent No. 1 and Shri R.N. Singh Counsel for the respondent No. 3.

में अंतिम सुनवाई के लिये प्रस्तुत किया जाना था। न्यायालय द्वारा निम्नलिखित आदेश पारित किया गया :—

आदेश dated 22-9-2000

attached herewith.

Mohan Lal

Section Officer

Election Commission of India

New Delhi-1.

HIGH COURT OF MADHYA PRADESH AT JABALPUR**Election Petition No. 1/97**

Dilip Parasram

Vs.

Kamal Nath and others

Present : Hon'ble Mr. Justice Dipak Misra

Mr. R.K. Thakur, Mr. D.S. Thakur and Mr. L.P. Sahu, counsel for the petitioner.

Mr. V.K. Tankha, Mr. P.D. Gupta, Mr. Sanjay Agarwal, Mr. B.N. Mishra, Mr. Pratul Shandilya, Mr. Rahul Jain, Mr. Pratul Shukla, Mr. Rajesh Pancholi, Mr. Ajay Gupta, Mr. Ajay Tamrakar and Mr. Sunil Kumar Singh, counsel for the respondent No. 1.

Mr. R.N. Singh, senior counsel, Mr. A.P. Singh, Mr. G.P. Singh, Mr. A.J. Pawar, Mr. Hemant Shrivastava, Mr. Mahesh Sharma and Mr. V.V.S. Murthy, counsel for the respondent No. 3.

ORDER

(22/9/2000)

The petitioner, an unsuccessful candidate, from Parliamentary Constituency No. 27, Chhindwara, Distt. Chhindwara, in the election held on 8-2-1997 for the Parliament has invoked the jurisdiction of this Court under sections 80-A and 81 of the Representation of Peoples Act, 1951 (hereinafter referred to as 'the Act') has prayed for declaration of the election of respondent No. 3, the returned candidate, to be void and further to grant any other relief, as may be deemed just and proper in the facts and circumstances of the case. The main grounds on which the petition has been filed, are that the respondent No. 3, the candidate of Bhartiya Janta Party has taken resort to corrupt practices by not submitting the proper expenditure made by him in the election and spending in excess than the Scheduled amount; and (ii) had given a speech in the name of religion to attract the voters.

2. The case as pleaded in the election petition is that the petitioner contested as an independent candidate for the Constituency No. 27, Chhindwara in the parliamentary election held on 8-2-1997. The votes of the said election were counted on 11-2-1997 and 12-2-1997 and the respondent No. 3, a candidate of the Bhartiya Janta Party was declared elected. It is putforth that the respondent No. 1 was a candidate of the Congress (I) party and he secured 3,06,622 votes and the respondent No. 3 secured 3,44,302 votes. It has been alleged that the respondent No. 3 in violation of the provision enshrined under Section 123(3) of the Act addressed huge gathering on 6-2-1997 at 7 p.m. in the Stadium ground Chhindwara and made an appeal on the ground of his religion i.e. Jainism. He gave a speech in the meeting indicating that the people should vote for him as he is a Jain and should not vote for the respondent No. 1, the candidate of the Congress (I). It is further alleged that respondent No. 3 further stated that his party i.e. Bhartiya Janta Party is fighting the cause of 'Ram' in 'Ayodhya' and hence, the voters of Chhindwara should vote for him and his party. Because of this appeal which was founded on religion, the voters of Chhindwara Parliamentary Constituency were misguided, as a result of which the respondent No. 3 became successful defeating the respondent No. 1, the candidate of the Congress (I). It is pleaded that by virtue of this action the respondent No. 3 is guilty of committing corrupt practice as there has been a breach of the provision as enshrined under Section 123(3) of the Act. It has been setforth that in the said public meeting the petitioner, Brij Mohan Sahu, Firoz Khan and Thakur Hemant Singh were present. The other compartment of corrupt practice as levelled against the respondent No. 3 relates to the election expenses of the respondent No. 3. It is putforth in the petition that the respondent 3 declared his total expenditure to the tune of Rs. 2,09,923/- which is false and does not show the real expenditure incurred by the candidate. It is alleged that respondent No. 3 has not shown the expenses incurred towards telephone calls which is estimated to the tune of Rs. 50,000/-. He has also not shown the expenses borne out by him for inviting the Bhartiya Janta Party workers from the State of Gujarat who travelled by aeroplane from Gujarat to the State of M.P. during the election period. It has been alleged that the said expenditure must have exceeded more than Rs. 2 lacs. It is also setforth in the petition that in the accounts it has been mentioned that the Bhartiya Janta Party had spent Rs. 3,22,422/- but as an actual fact, same has been borne by the respondent No. 3. Thus, it is pleaded that the respondent No. 3 has exceeded the permissible limit i.e. Rs. 4.5 lacs fixed for the State of M.P. and hence, he is guilty of corrupt practice as provided under Section 100(1)(d)(iv) read with Rules 86 to 90 of Conduct of Election Rules, 1964.

3. A written statement has been filed by the respondent No.1 supporting the stand of the applicant.

4. The respondent No.3, the returned candidate, Shri Sunderlal Patwa, has filed his reply refuting the allegations made in the written statement. He has denied the allegations regarding violation of any provisions of the Act. His specific stand is that he had not addressed any public meeting on 6-2-1997 at 7 p.m. and the question of making an appeal on the ground of religion did not arise. It is also put forth that the majority of voters in Chhindwara Constituency do not belong to Jain religion and he had not appealed to them in the name of his religion to vote for him. It is also denied that the said respondent appealed to the voters to vote for him in the name of Lord Rama. He has also disputed that the voters were misled by making such an appeal. The presence of the persons in the meeting is also disputed. It is categorically put forth that on 6-2-1997 at about 12 noon a public meeting was held at Chhindwara and the same was addressed by Shri Atal Behari Bajpai and in the said meeting the respondent No.3 had welcomed the chief guest and spoken for two minutes.

With regard to the allegations relating to excess expenses it is the stand of the respondent No.3 that he has filed the correct return before the competent authority and the same is neither bogus nor false. He has specifically denied to have spent

Rs.50,000/- towards telephone calls or STD charges. He has also disputed to have incurred any expenditure towards the journey expenses of workers coming from Gujrat on his invitation. The respondent No.3 has also specifically denied that the expenditure incurred by the Bhartiya Janta Party amounting to Rs.3,22,422/-, was incurred by him. It is his positive stand that whatever expenses he had incurred, he had shown in his return and similarly the expenses incurred by the Bhartiya Janta Party had been shown in the name of the Party.

5. On the basis of the aforesaid pleadings the following issues were framed:

(i) Whether the respondent No.3 while addressing a public meeting held on 6-2-1997 at 7 p.m. in the Stadium ground Chhindwara made appeal to the voters on the ground of his religion, Hindu religion and is, therefore, guilty of corrupt practice under Section 100(1)(d)(iv) of the R.P.Act, 1951 ?

(ii) Whether the respondent No.2 has incurred expenditure for participating in the election beyond the permissible limit and his election is liable to be set aside on the ground contained in Section 110(1)(d)(iv) the R.P. Act ?

6. In support of the election petition the petitioner has examined two witnesses including himself. The respondent No.3 examined himself. Other

respondents chose not to adduce any oral evidence. In course of adducing oral evidence on behalf of the petitioner, the account sheets furnished by the respondent No.3 were marked as Ex.P/1 series. The video cassette relating to the meeting dated 6-2-1997 was marked as Ex.P/2. The result sheet was marked as Ex.P/3. On behalf of the respondent No.3 no document was brought on record.

7. On the basis of the materials brought on record the oral and documentary, I shall proceed to decide the issues raised in the case.

8. Issue No.1 :

The issue No.1 relates to holding of public meeting on 6-2-1997 in Chhindwara Stadium in the evening hours and the speech of the respondent No.3. In this context, I may profitably refer to Section 123(3) of the Act. It reads as under:

"(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of

the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

[Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(3B) The propagation of the practice or the commission of *sati* or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the

election of that candidate or for pre-judicially affecting the election of any candidate.

Explanation:- For the purpose of this clause, "sati" and "glorification" in relation of "sati" shall have the meanings respectively assigned to them in the commission of Sati (Prevention) Act, 1987.]"

The aforesaid provision came to be interpreted in the case of Kanti Prasad Vs. Purshottamdas, AIR 1969 SC 951 wherein their Lordships expressed as under:

"One other ground given by the High Court is that 'there can be no doubt that in this passage (passage No.3) Shambhu Maharaj has put forward an appeal to the electors not to vote for the Congress Party in the name of the religion'. In our opinion, there is no bar to a candidate or his supporters appealing to the electors not to vote for the Congress in the name of religion. What Section 123(3) bars is that an "appeal by a candidate or his agent or any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, i.e., the religion of the candidate."

Prior to the aforesaid decision the Apex Court had the occasion to deal with Section 123(3) of the Act in the case of Kultar Singh Vs. Mukhtir Singh, AIR 1965 SC 141 wherein their Lordships ruled thus:

"Before we part with this appeal, we may refer to a recent decision of this Court in Jagdev Singh Sidhanti Vs. Pratap Singh Daulta, Civil Appeal No.936 of 1963, D/-12-2-1964 (SC). In that case, the election of the successful candidate was challenged on the ground that he had committed a corrupt practice under Section 123(3) of the Act in that he had appealed to voters to vote for him on the ground of his language, and the High Court had upheld that contention. In reversing the conclusion of the High Court, this Court pointed out that the reference to the language on which the challenge to the successful candidate's election was based, had to be considered in the context of the main controversy between the parties and that controversy was that the Haryana Lok Samiti which had sponsored the candidature of the successful candidate wanted to resist the imposition of Punjabi in the Haryana region and that was clearly a political issue. If in propagating its views on

such a political issue, a candidate introduces an argument based on language, the context of the speech in which the consideration of language has been introduced must not be ignored, and that is how this Court held that the corrupt practice alleged against the successful candidate had not been established. Political issues which form the subject-matter of controversies at election meetings may indirectly and incidentally introduce considerations of language or religion, but in deciding the question as to whether corrupt practice has been committed under Section 123(3), care must be taken to consider the impugned speech or appeal carefully and always in the light of the relevant political controversy. We are, therefore, satisfied that the High Court was in error in coming to the conclusion that the impugned poster Ex.P/10 attracted the provisions of section 123(3) of the Act."

I may also profitably refer a decision rendered in the case of Dr. Das Rao Deshmuch Vs. Kamal Kishore Nansaheb, (1995) 5 SCC 123 wherein the Apex Court held as under:

" We may however, indicate that speeches delivered in the election meeting by leaders of political parties should be appreciated dispassionately by keeping in mind the context in which such speeches were made. This Court has indicated a note of caution that in election speeches appeals are made by candidates of opposing political parties often in an atmosphere surcharged with partisan feelings and emotions. Use of hyperboles are exaggerated language or adoption of metaphors and extravagance of expression in attacking one party or a candidate are very common and court should consider the real thrust of the speech without labouring to dissect one or two sentences of the speech, to decide whether the speech was really intended to generate improper passions on the score of religion, caste, community etc. In deciding whether a party or his collaborators had indulged in corrupt practice regard must be had to the substance of the matter rather than mere form of phraseology. In Kultar Singh's case (supra) this Court has recognised that there are several parties whose membership is either confined to or predominantly held by members of some communities or religion and that an

appeal made by candidates of such parties for votes may in an indirect way concavely be influenced by considerations of religion, race, community or language, so long as the law recognises such parties for the purpose of election and parliamentary life, this situation cannot be avoided."

9. The present factual matrix has to be tested on the touchstone of the aforesaid law. The petitioner has alleged, that Shri Sunderlal Patwa, the respondent No.3, addressed a meeting on 6-2-1997 at 7 p.m. in the Stadium ground at Chhindwara, made an appeal on the ground of his religion 'Jainiam'. He addressed, as alleged that they should vote for him alone and not in favour of the respondent No.1. It is also alleged that he appealed in the name of Hindu religion stating that the Bhartiya Janta Party is fighting of the cause of Lord Rama in Ayodhya and Lord Rama is a Hindu God and is worshipped throughout the country and hence, the voters of Chhindwara should vote for his Party. On the basis of this allegation it has been highlighted that the respondent No.3 has committed corrupt practice as envisaged under Section 123(3) of the Act. The petitioner who has been examined as witness PW-2, in his examination-in-chief has deposed as under:

"A public meeting was held at 7 p.m. on 6-2-1997 on behalf of Bhartiya Janta Party and in the said meeting I was present. Along with me Firoz Khan,

Brijmohan Sahu and Thakur Hemant Singh were present. The said meeting was held in the stadium ground and it was presided over by Kanhai Ram Raghuvanshi, the District President of Bhartiya Janta Party. Shri Sunderlal Patwa, Chandrabhan Choudhary and Shri Atal Behari Bajpai were present on the dias. I heard the speech rendered by Shri Patwa who tried to influence the public by invoking religious sentiments. He assured the people that he will build a temple for Lord Rama."

In his cross-examination he has deposed as under:

"I did not go any way on 6-2-1997 and remained at Chhindwara as Shri Atal Behari Bajpai was scheduled to come to Chhindwara. My supporter Thakur Hemant Singh was with me. I cannot say what time the chartered plane landed at Chhindwara. I do not remember when Shri Bajpai gave his speech. I also do not remember when Shri Patwa gave his speech. I know Thakur Hemant Singh and Brijmohan Sahu and Firoz Khan for the last 3 to 5 years. I did not show my reaction to the speech of Shri Patwa and did not lodge any complaint any where."

Except the aforesaid evidence there is nothing-else on record. True it is, a video cassette has been exhibited relating to the meeting, vide Exhibit P-2 but except marking it as an exhibit, nothing has been elicited from the official witness in support of the cassette. No petition was filed for playing the cassette or to do anything-else in respect of the said cassette. The Election Supervisor who came with the cassette did not enlighten anything except stating that his knowledge with regard to the date of the meeting is based on the writing on the video cassette and he has no personal knowledge. In the pleading it has only been stated that Shri Sunderlal Patwa addressed gathering by stating they should vote for him in the name of Jain religion. In the ~~xxxxxx~~ examination in-chief it has been mentioned that Shri Patwa sought support of the entire Jain community. Though the petitioner has stated that other persons, namely, Brijmohan Sahu, Firoz Khan and and Thakur Hemant Singh were present, none of them has been examined. In the cross-examination the petitioner has deposed that he is unable to say at what time the chartered plane landed at Chhindwara. He has also expressed his inability to indicate the time when Shri Atal Behari Bajpai gave his speech. He has further stated that he does not remember when Shri Patwa gave his speech. He has also admitted that he has not lodged any complaint anywhere in regard to the said speech. Except the bald statement of the petitioner there is no other corroborative evidence to show that respondent No.3 appealed to the voters in the name of Jain religion.

In view of the sketchy and scanty evidence on record, I am not inclined to accept that respondent No.3 had appealed in the name of Jain religion.

10. As far as the other aspect is concerned, the allegation is that the returned candidate tried to invoke sympathy of the voters by making utterances pertaining to religious sentiment. As has been indicated, he assured the people that he will build a temple for Lord Rama.

In this context, Mr. R.N. Singh, learned senior counsel for the respondent No.3 has drawn the attention of this Court to the case of Narain Singh Vs. Sunderlal Patwa, 1996 J.L.J. 158 wherein this Court held as under:

"All these utterances cannot be said to be seeking a vote in the name of religion. They were political issues and it may have a religious overtone but they were primarily political issues and not only Sunderlal Patwa but all over country this issue was debated and still it is a moot point. To characterise these utterances to be a religious utterance so as to fall under the definition of corrupt practice under Section 123(3) of the Act would amount to convert these political utterance to be religious, is not warranted under the law. The 1993 election was fought on this political

issue whether to construct a temple or Masjid at Ayodhya, though it has a religious overtone but it was conveted into a issue and it cannot be stigmatised as a religious issue only."

(quoted from the placitum)

The purpose^{of} referring to the aforesaid decision is to show that this Court has already held that religious utterances relating to Ayodhya or Rama would not come within the ambit and sweep of Section 123(3) of the Act. True it is, the said finding was recorded pertaining to election held in the year 1993 and presently the situation has changed.. However, the fact remains, in the case at hand the respondent No.3 has, as alleged, had assured the people that he would build a temple for Lord Rama. Even assuming such a plea is accepted, in my considered opinion, that will not come within the concept of appeal seeking votes in the name of 'his religion' inasmuch as the religion of the respondent No.3 is 'Jainism' and he had only stated, as alleged tha the would build a temple for Lord Rama. Quite apart from the above, the respondent No.3 who has been examined as witness No.1 for respondent No.3, has categorically stated that he had not addressed the gathering in relation to votes and had not spoken anything with regard to 'Ram Mandir' or any aspect of Hinduism of Hindu religion. In this context, I may usefully refer to a decision rendered in the case of Manohar Joshi Vs. Nitin Bhaurao Patil and another, AIR 1996 SC 796, wherein the Apex Court held

that Hindutva by itself does not invariably mean Hindu religion. It is the context and the manner of its use which is mainly for deciding the meaning of the word 'Hindutva' in a particular case. That apart, the evidence in this regard is absolutely scanty and does not really build a foundation to sustain the allegation. Except the bald statement of the petitioner there is nothing else on record to inspire evidence. On the contrary the statements of the respondent No.3 is more acceptable. In view of the totality of the evidence brought on record, I am of the considered opinion that respondent No.3 has not committed corrupt practice as engrafted under Section 123(3) of the Act.

11. Issue No.2:

Issue No.II relates to incurring of expenses beyond the permissible limit which gives rise to committing corrupt practice under the Act. Before I advert to the Issue No.II in a specific manner, I think it apposite to state that standard of proof in respect of corrupt practice is like a criminal trial and should be beyond reasonable doubt. Burden lies heavily on the person alleging corrupt practice. In this context, I may usefully refer to a decision rendered in the case of Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, AIR 1995 SC 2284 wherein it has been held as under:

"In case of an election petition based on allegations of commission of

corrupt practice the standard of proof is generally speaking that of criminal trials, which requires strict proof of the charge beyond a reasonable doubt and the burden of proof is on the petitioner and that burden does not shift. This proposition, however, does not mean or imply that the returned candidate is absolved from his liability to bring forth evidence on the record to rebut the case of the petitioner and to particularly prove such facts which are within his special knowledge. Though, the nature of allegations in cases alleging corrupt practices are quasi-criminal and the burden is heavy on him who assails an election but unlike in a criminal trial, where an accused has the liberty to keep silent, during the trial of an election petition the returned candidate has to place before the Court his version and to satisfy the court that he had not committed the corrupt practice as alleged in the petition and wherever necessary by adducing evidence besides giving his sworn testimony denying the allegations. However, this stage reaches if and when the election

petitioner leads cogent and reliable evidence to prove the charge levelled against the returned candidate as, only then, can it be said that the former has discharged his burden. The election petitioner has to establish the charges by proof beyond reasonable doubt and not merely by preponderance of probabilities as in civil action."

12. Allegation relating to corrupt practice which is covered in Issue No.2, has to be tested on the aforesaid touchstone. The petitioner has alleged that Shri Patwa did not show expenses with regard to telephone calls and STD charges for which he has spent Rs.50,000/-. It is also alleged that he has not shown expenses borne out by him personally, inviting the Bhartiya Janta Party workers from Gujrat. It is also alleged that he must have spent on this head more than Rs.2 lacs. Allegation has also been made that amount has been directly paid by Shri Patwa in his personal capacity but he has shown it in the name of Bhartiya Janta Party. In this context I may profitably refer to Section 77 of the Act which deals with account of election expenses. It reads as under:

"77.Account of election expenses and maximum thereof.—

(1) Every candidate at any election shall either by himself or by his election agent, keep a separate and

correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between [the date on which he has been nominated] and the date of declaration of the result thereof, both dates inclusive.

Explanation 1. Notwithstanding any judgment, order or decision of any court to the contrary, any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of this sub-section:

Provided that nothing contained in the *Explanation* shall affect-

(a) any judgment, order or decision of the Supreme Court whereby the election of a candidate to the House of the People or to the Legislative Assembly of a State has been declared void or set aside before the

commencement of the Representation of the People (Amendment) Ordinance, 1974 (Ord.13 of 1974);

(b) any judgment, order or decision of a High Court whereby the election of any such candidate has been declared void or set aside before the commencement of the said Ordinance if no appeal has been preferred to the Supreme Court against such judgment, order or decision of the High Court before such commencement and the period of limitation for filing such appeal has expired before such commencement.

Explanation 3- - For the removal of doubt, it is hereby declared that any expenditure incurred in respect of any arrangements made, facilities provided are any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of Section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.]

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

13. It is not disputed at the Bar, that for Parliamentary election in Madhya Pradesh for the year 1997, maximum limit prescribed was Rs.4.5 lacs. Section 123(6) of the Act makes the incurring or authorising of expenditure in contravention of Section 77 of the Act, a corrupt practice. The petitioner who has examined himself as witness No.2 has stated as under:

" Shri Patwa belongs to Jain community. Shri Patwa in his speech sought support of the entire Jain community. After publication of the results, I applied for the accounts relating to election expenses of Shri Patwa. The accounts did not reflect any expenses towards telephone charges. According to me Shri Patwa must have spent Rs.25,000/towards telephone charges. The accounts showed that in the meeting of Shri Atal Behari Bajpai Rs.1500/were spent in making the arrangements. Shri Bajpai had come to

Chhindwara by a chartered plane. Expenses for the same has not been reflected in the accounts submitted by Shri Patwa. Voucher No.99 of the Exhibit P series have not been signed by anyone. There are many vouchers in Exp.1 series which do not bear the signatures of the persons who have received the amount. I have seen a receipt given by Nitin Society Centre, Chhindwara in favour of Shri Sunderlal Patwa. That is voucher No.11 of Ex.P-1 series. Shri Patwa spent 2,00,000/- in the election and his party spent about Rs.3,00,000/-."

Except this evidence by PW-2 there is no other corroborative evidence. The petitioner, PW-2 has not uttered a single word in his statement about the election expenses incurred by the Bhartiya Janta Party. He has also not stated that the expenditure made by the Bhartiya Janta Party was actually paid by Shri Patwa. Though he has stated that Shri Atal Behari Bajpai had gone to Chhindwara by a chartered plane, he has not stated that said expenses were met by the respondent No.3. No one has been examined to support the statement that hire charges for the chartered plane was borne by the respondent No.3. On the contrary, the respondent No.3 has examined himself and stated that his personal expense was Rs.2,09,923/- and the district unit of the Bhartiya Janta Party spent an amount of Rs.3,22,422/-. He has denied the fact that any one

from Gujrat had come for canvassing in his favour. It is worth noting here that the petitioner has not stated that the workers of the Bhartiya Janta Party had come in an aeroplane from Gujrat to canvass in favour of the respondent No.3. The respondent No.3 in his evidence has categorically stated that he had not availed the STD facilities. He had also stated that expense for purchase of clothes amounting to Rs.9000/-, which has been shown in his name, was actually purchased from the fund of Chhindwara unit of the Party. In cross-examination he has clearly stated he had made all the arrangements for conducting of the election. He has also deposed that he had stayed in the house of of Vijay Jhanjhari while he was at Chhindwara. He has also stated that he had spent Rs.1,090/- in the election meeting held at Chhindwara which was attended by Shri Atal Behari Bajpai. Mr. R.K. Thakur, learned counsel for the petitioner has laboured hard to point out that some of the vouchers have not been signed by the person accepting the payment. He has referred to the evidence of PW-2 to show that a receipt was given by Nitin Society Centre, Chhindwara in favour of Shri Patwa, which is voucher No.11 of the Ex.P/1 series. In essence, submission of Mr. Thakur^{is} that some vouchers have not been signed by the persons who accepted the payment. Mr. Thakur has heavily relied on the decision rendered in the case of D.P. Mishra Vs. Kamal Narayan Sharma and another, AIR 1970 SC 1477 to highlight if certain accounts are not explained, it would amount to corrupt practice.

Mr. R.N. Singh, learned senior counsel for the respondent No. 3 has placed reliance on the decision rendered in the case of L.R. Shivaramagowda and others Vs. T.M. Chandrashekhar (dead) by LRs and others, (1999) 1 SCC 666 wherein the Apex Court held as under:

"What is referred to in sub-section (6) of section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section (3) of Section 77, i.e., the incurring or authorising of expenditure in excess of the amount prescribed. It cannot be by any stretch of imagination be said that non-compliance with sections 77(1) and (2) would also fall within the scope of section 123(6). Consequently, it cannot fall under Section 100(1)(b). The attempt to bring such non-compliance within Section 100(1)(d)(iv) must also fail because the essential requirement under Section 100(1)(d)(iv) is that the result of the election insofar as it concerns the returned candidate has been materially affected. It is needless to

point out that failure on the part of the returned candidate to maintain accounts as required by sections 77(1) and (2) will in no case affect, and much less materially, the result of the election."

14. The main thrust of the argument of Mr. Thakur is that in some of the vouchers the signatures of recipient do not find place. To appreciate the aforesaid submission I have perused the vouchers and I find that most of the vouchers were paid by the Bhartiya Janta Party. Quite apart from the above, petitioner has not been able to substantiate by cogent evidence that the respondent No. 3 has spent more than Rs. 4.5 lacs (that being the maximum limit for parliamentary election in Madhya Pradesh as per Rule 90 of the Conduct of Election Rules.). It is worth noting here that no document has been produced to establish that charter plane was hired by respondent No. 3. No acceptable evidence has been brought on record to show that telephone bills were raised in the name of respondent No. 3 and the said bill amounted to Rs. 50,000/-. That apart, there is no credible evidence that Shri Patwa spent rupees two lacs in the Air tickets to bring the workers from Gujrat to canvass for him in Chhindwara. In view of the aforesaid, I am of the considered view that the petitioner has utterly failed to make out a case of corrupt practice as envisaged under Section 123(6) of the Act.

13. In view of my preceding analysis the question to be answered to what relief the petitioner is entitled. As both the issues have been answered against the petitioner, the Election Petition has to fail.

15. Resultantly, the Election petition is dismissed with the cost of Rs.2000/-.

Sd/-
DIPAK MISRA,
Judge.

List of the witnesses examined on behalf of the petitioner:

PW-1: Shri Ram Narayan Shukla

PW-2: Dilip Parasram

List of witnesses examined on behalf of the respondent No.3:

PW-1: Sunderlal Patwa

List of documents exhibited by the petitioner:

Ex.P/1 Series: Account sheets.

Ex.P/2 Series: Video cassette relating to election meeting held on 6-2-1997.

Ex.P/3 Series: Result sheet of the election.

List of document exhibited by the respondent No.3:

Nil

[No. 82/MP-HP/(1/97)/97]

By Order,

L.H. FARUQI, Secy.

